



## **I. Introduction and Summary**

The American Cable Association (“ACA”) submits these Reply Comments in support of the Comments filed in this proceeding by the National Cable & Telecommunications Association (“NCTA”) on March 8, 2005 (“NCTA’s Comments”).

Like NCTA, ACA is a trade association serving the cable television industry. ACA represents nearly 1,100 independent cable companies that serve more than 8 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states and in virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators that focus on serving smaller markets. More than half of ACA’s members serve fewer than 1,000 subscribers. All ACA members face the challenges of upgrading and operating broadband networks in lower-density markets. All ACA members and their customers face higher costs for basic cable service because of the more onerous regulatory burdens imposed on ACA’s members than on DBS operators.

As described in NCTA’s Comments, the regulatory scheme applied to cable, as compared to DBS, is fundamentally unfair. These Reply Comments demonstrate why the disparity is even greater for ACA’s smaller market cable operators. ACA therefore fully supports NCTA’s Comments and its recommendation that the Commission remedy one aspect of the disparity by amending its rules and assess a per-subscriber regulatory fee on DBS customers.

## **II. Regulatory disparities disproportionately impact small market cable operators.**

In the smaller markets served by ACA’s members, independent cable operators

are the competitive check on the two national DBS operators. But competition is endangered in some smaller markets. To begin with, ACA's small market members face tougher DBS competition than their metropolitan counterparts.<sup>1</sup> ACA has addressed in numerous proceedings the threat that the powerful DBS giants pose to smaller market cable operators.<sup>2</sup> This threat is compounded because DirecTV and EchoStar enjoy a much lighter regulatory burden than cable operators:

### **Regulatory Burdens – Cable vs. DBS**

#### **Cable**

- Must carry
- Retransmission consent
- EAS
- Tier buy-through
- Franchise fees
- Local taxes
- Signal leakage/CLI
- Rate regulation
- Mandatory broadcast basic
- Privacy obligations
- Customer service obligations
- Service notice provisions
- Closed captioning
- Billing requirements
- Pole attachment fees
- Public file requirements

#### **DBS**

- Must carry
- Retransmission consent
- Limited public interest obligations
- Privacy obligations

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<sup>1</sup> See *United States General Accounting Office Report to the Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Issues related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-08 (October 2004) at 62 (DBS penetration is greater in non-metropolitan areas and tends to increase as the size of the market decreases).

<sup>2</sup> See, e.g. *In re Consolidated Application of EchoStar Communications Corporation, et al, for Consent to Transfer Control*, CS Docket No. 01-348, *American Cable Association Petition to Deny* (February 4, 2002) at 21-22; *Inquiry Required by the Satellite Home Viewer Extension and Reauthorization Act on Rules Affecting Competition in the Television Marketplace*, MB Docket No. 05-28, *American Cable Association Comments* (March 1, 2005) at 1-6. ACA asks the Commission to incorporate these filings in the record of this proceeding.

NCTA's Comments address yet another disparity – cable operators pay regulatory fees far in excess of what the national DBS providers pay. In FY2004, ACA's members paid over \$5.6 million in regulatory fees for their 8 million subscribers. The two major DBS providers, DirecTV and EchoStar, paid only \$2 million for their 25 million subscribers.<sup>3</sup>

This discrepancy is even worse than it appears on its face. Congress and the Commission have consistently recognized the significant financial and administrative difficulties faced by smaller cable operators.<sup>4</sup> There is no rational policy or any other justification for burdening these often-struggling operators with regulatory fees nearly nine times as high<sup>5</sup> as those paid by the well-capitalized DBS giants, especially on top of the disproportionate regulatory burdens detailed above. If the Commission wants to ensure that consumers in smaller markets have a choice of video providers, it must reduce, or at least equalize the regulatory burdens on smaller cable. Assessing a per-subscriber regulatory fee on DBS is an important first step.

### **III. Conclusion**

ACA's small market members bear a far heavier regulatory burden than the national DBS giants. The current regulatory fee regime only adds to this disparity. Without regulatory parity, some smaller cable operators will be increasingly unable to

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<sup>3</sup> See *NCTA's Comments* at 5.

<sup>4</sup> See, e.g. 47 USC § 543(i) ("In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers."); Section 301(c) 1996 Telecommunications Act (providing greater deregulation for small systems), codified at 47 USC § 543(m). Moreover, in scores of recent orders granting waivers of its EAS requirements, the Commission has acknowledged the financial hardships faced by small cable systems.

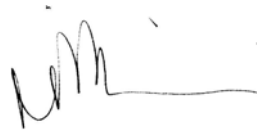
<sup>5</sup> See *NCTA's Comments* at 10.

compete with DBS, and smaller market consumers will suffer. To promote fairer competition between cable and DBS and consumer choice, the Commission should carefully study NCTA's Comments and act on NCTA's proposal.

Respectfully submitted,

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